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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DEAUNDRE ANDREW ALEXANDER,

Defendant and Appellant.

A130824

(Contra Costa County
Super. Ct. No. 50911610)

A jury convicted defendant Deaundre Andrew Anderson of several offenses, including being a felon in possession of a firearm and active participation in a criminal street gang. Defendant contends there is insufficient evidence to support the conviction for gang participation because he committed the underlying offense on which the conviction is based alone, without the involvement of another gang member. We reject the contention and shall affirm the judgment.

FACTS AND TRIAL COURT PROCEEDINGS

On June 21, 2009, uniformed police officers went to a house in Parchester Village in Richmond to execute an arrest warrant for defendant, a convicted felon. When the officers arrived in marked patrol cars, they saw defendant sitting on the front lawn of the house with four to eight young men. Several police officers exited their patrol cars and walked toward defendant, who immediately stood up, turned around, and walked toward the house in an “extremely nervous” manner. The officers called out to defendant by name, asking him to stop. Defendant did not stop; he quickened his pace toward the house. Defendant was holding the front area of his pants, which suggested to the police

officers that defendant was “trying to maintain possession of a firearm” concealed in his pants. Defendant reached the house before the police could intercept him. Defendant went through the house and ran out the back door, where a police officer apprehended him. Defendant was searched but no firearm was found.

A resident of the house told the officers that she saw defendant run into the house. The resident testified that defendant ran in front of the living room couch and the resident heard a noise, like something hitting the ground. The police searched the living room and found a firearm next to the couch. The resident testified that she did not allow guns in the house and was “positive” there was no gun in the house before defendant arrived. The firearm was a semiautomatic handgun with a laser sight. The handgun had a chambered round of ammunition ready to fire, and nine additional bullets in the handgun’s magazine. Defendant’s thumb print was on the handgun’s magazine.

Defendant was taken to jail and, during booking, was asked if he was a member of any gang. Defendant said “yes,” that he was “from Parchester Village,” and that his “rivals” were North Richmond. A police officer with gang expertise testified that there is a criminal street gang known variously as “Parchester Village,” “Parchester Villains,” and “PV.” The officer said PV’s primary activity is narcotic sales and that it commits various crimes to facilitate sales, including robbery and murder. The officer opined that defendant is a PV gang member based on a number of factors, including that defendant has prior convictions for drug sales and firearm possession, associates with known gang participants, displays gang signs and symbols, and produces rap videos in which he sings about Parchester Village, guns, and shooting people. The officer also opined that defendant possessed the handgun to promote criminal activity of the gang, and for the gang’s benefit. Guns protect the gang and its “turf,” the officer testified, and boosts defendant’s standing in the gang. The officer noted that defendant was with several known gang associates when he was arrested and that he dropped the gun in the home of a gang member’s grandmother when pursued by the police. The officer was asked, “Does the particular activity of being a felon in possession of a firearm by an individual who is a known Parchester Village gang member, depositing it in a location that’s accessible to

other associates and gang members, does that particular activity promote, further, or assist the gang?” The officer answered, “yes,” and explained that defendant left “the gun still in the hands of the gang and in a protected place.”

The jury convicted defendant of being a felon in possession of a firearm (Pen. Code, § 12021, subd. (a)(1)),¹ being a felon in possession of ammunition (§ 12316, subd. (b)(1)), active participation in a criminal street gang (§ 186.22(a)), and resisting arrest (§ 148, subd. (a)(1)). The jury found not true the allegations that the firearm and ammunition offenses were committed for the benefit of the gang (§ 186.22, subd. (b)(1)). The court sentenced defendant to the two-year midterm for the firearm offense, stayed sentence on the ammunition and gang participation offenses under section 654, and sentenced defendant to 180 days in county jail for resisting arrest, which was satisfied by credit for time served. Defendant timely filed a notice of appeal.

DISCUSSION

Defendant contends there is insufficient evidence to support his gang participation conviction. Section 186.22(a) criminalizes street gang participation: “Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in county jail” or by imprisonment in the state prison. The California Supreme Court has explained that the crime has three elements: “(1) active participation in a criminal street gang, in the sense of participation that is more than nominal or passive; (2) knowledge that the gang’s members engage in or have engaged in a pattern of criminal gang activity; and (3) the willfull promotion, furtherance, or assistance in any felonious criminal conduct by members of that gang.” (*People v. Albillar* (2010) 51 Cal.4th 47, 56.)

¹ All further section references are to the Penal Code. Section 186.22, subdivision (a) is hereafter abbreviated as section 186.22(a).

On appeal, defendant does not deny that he actively participated in a street gang and knew that the gang's members engaged in a pattern of criminal gang activity. He disputes only the third element. Defendant contends the evidence is insufficient to establish his "willfull promotion, furtherance, or assistance in any felonious criminal conduct by members of that gang" because his commission of felonious criminal conduct (firearm possession) occurred without the direct participation of other gang members. To violate section 186.22(a), defendant argues, one must "promote, further or assist the criminal conduct of another gang member who participates in the same offense."

Several court of appeal cases have rejected this contention. In *People v. Ngoun* (2001) 88 Cal.App.4th 432, 436, the Fifth Appellate District concluded that a gang member promotes felonious criminal conduct by members of the gang either by aiding another gang member in committing a felony *or* by perpetrating a felony himself. The Fifth District reaffirmed that statutory interpretation in *People v. Salcido* (2007) 149 Cal.App.4th 356, 368, and expressly rejected the contention that section 186.22(a) "imposes liability on perpetrators only if they commit the crime in concert with other gang members." The Fourth Appellate District followed *Ngoun* and *Salcido* in affirming a section 186.22(a) conviction where defendant committed robberies with an accomplice who was not a gang member. (*People v. Sanchez* (2009) 179 Cal.App.4th 1297, 1305-1308.) The court rejected the view that the statute imposes liability on perpetrators only if they commit the crime in concert with other gang members.

Some doubt about the correctness of this interpretation has been raised by the Third Appellate District, which disagreed with this line of cases and reversed a judgment of conviction under section 186.22(a) where defendant was a lone assailant. (*People v. Rodriguez* (2010) 188 Cal.App.4th 722, 731-737, review granted Jan. 12, 2011, S187680.) In *Rodriguez*, the Third District focused upon the statutory language that punishes one "who willfully promotes, furthers, or assists in any felonious criminal conduct by *members* of that gang." Emphasizing that "members" is in the plural, the court held that this language limits liability to members of a gang who together commit a specific, identified felony. (*Id.* at pp. 733-737.) One justice dissented, finding it sufficient

that “one member of the gang—defendant—was promoting the felonious criminal conduct by himself committing an attempted robbery.” (*Id.* at p. 739 (dis. opn. of Sims, J.).)

Pending resolution of the issue by our Supreme Court, we will follow existing precedent. (*People v. Sanchez, supra*, 179 Cal.App.4th at pp. 1305-1308; *People v. Salcido, supra*, 149 Cal.App.4th at p. 368; *People v. Ngoun, supra*, 88 Cal.App.4th at p. 436.) Based on the interpretation of the statute adopted in these cases, sufficient evidence supports the jury’s finding that defendant furthered and promoted felonious criminal conduct by members of his gang by his own felonious criminal conduct of possessing a firearm.

DISPOSITION

The judgment is affirmed.

Pollak, J.

We concur:

McGuiness, P. J.

Siggins, J.